

Decision 03-02-049 February 27, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U 338-E) for Authority to Lease
Available Land on the Etiwanda-Padua and Mira
Loma-Padua Right of Way to Copart, Inc.

Application 02-09-009
(Filed September 10, 2002)

**DECISION GRANTING APPROVAL
UNDER PUBLIC UTILITIES CODE SECTION 851
FOR A LEASE OF UTILITY PROPERTY**

We grant the Application of Southern California Edison Company (SCE) for authority to lease available land under Public Utilities Code Section 851.¹ The SCE property consists of a 13.7-acre site located on a portion of SCE's Etiwanda-Padua and Mira Loma-Padua transmission right of way in the City of Rancho Cucamonga (Site). The Site is part of the Etiwanda-Padua and Mira Loma-Padua 220 kilovolt (kV) system. The lease is sought to permit Copart, Inc. (Copart or Lessee) to construct and operate a semi-truck trailer and vehicle parking/storage storage facility on the Site.

Background

The Site is subject to an Option Agreement (Option Agreement) between SCE and Copart dated December 28, 2001. Pursuant to the Option Agreement, Copart has the right, subject to Commission approval, to lease the Site from SCE

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

for the described uses for a period of 20 years beginning on the date Copart exercises the option. Annual rent ranges from \$48,000 in Year 1 to \$75,529 in Year 20. The lease also grants Copart two ten-year renewal options at fair rental value, excluding the value of Copart's improvements.

The Option Agreement provides that Copart's activities must not interfere with the operation of the electric facilities that cross the Site. To that end, Copart is forbidden to use or store hazardous substances, explosives or flammable materials on the Site. Further, any equipment used by Copart on or adjacent to the Site must maintain at all times a clearance of at least thirty-five (35) feet from all overhead electrical conductors. Copart must maintain a minimum radius of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors and provide access roads to the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

SCE retains various rights under the Option Agreement including the rights to

- Approve Copart's construction plans and specifications;
- Enter the Site at any and all reasonable times to inspect the property;
- Impose temporary restrictions on Copart's right to enter, occupy and use the Site in order to perform necessary work on the electrical facilities located on the Site; and
- Take back all or part of the leasehold by eminent domain or inverse condemnation.

Copart is also required to

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to be constructed thereon;

- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Site;
- Maintain appropriate comprehensive general liability, auto liability, and worker's compensation insurance; and
- Indemnify SCE against all liability for damages or injury to persons on the Site except to the extent caused by SCE's negligent or willful misconduct.

The Application

On September 10, 2002, SCE filed its application, seeking authorization from the Commission to enter into the lease with Copart. SCE's application is made under Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public.² Leasing real property on which transmission towers and lines are

² Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or

Footnote continued on next page

located is therefore one of the enumerated activities that require approval under Section 851.³

Determination of Best Secondary Use

The primary use of facilities located on the Site is the transmission and distribution of electricity in the City of Rancho Cucamonga. SCE's above-ground electric lines crossing the Site, and their associated restrictions and height clearances limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the Copart project offers the highest potential revenue. To evaluate the rental potential of the Site, SCE analyzed the rent paid for comparable parking and storage facilities in and around the Site. SCE believes that the rent it will receive falls within the acceptable market range and is in line with revenues it receives from similar Commission-approved transactions.

invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

³ As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (Decision (D.) 92-07-007, 45 CPUC 2d 24, 29.)

Developer Selection

SCE states that it entered into the Agreement with Copart because of the economic benefits to SCE ratepayers. SCE chose Copart as its developer because the only means of public access to the Site is through an adjacent property that is currently owned by a Copart subsidiary. SCE accesses the Site through a flood control channel which is inadequate for any other use. Because of the limited public accessibility to the Site, Copart is the only viable candidate to lease the Site. Copart plans to develop the Site in conjunction with the construction of a new vehicle auction facility on its adjoining 41-acre property.

Copart is one of the nation's largest and most experienced automobile auction companies. It currently operates 84 vehicle auction facilities in 37 states. It trades on the NASDAQ market system under the ticker symbol CPRT.

Environmental Review

Because California Environmental Quality Act (CEQA) applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the Section 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051(b)).

In this case, the City of Rancho Cucamonga is the Lead Agency. The City's environmental review process and associated documents are functionally equivalent to the traditional CEQA preparation of an Environmental Impact Report. The California Public Utilities Commission (CPUC) is a Responsible Agency for this proposed project. CEQA requires that the CPUC consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency

environmental documents and findings before acting upon or approving the project. (CEQA guidelines 15050(b).) The specific activities that must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

We have reviewed the City's environmental documents and find them to be adequate for our decisionmaking purposes. On February 1, 2002, the City filed a Notice of Determination (NOD) with the San Bernardino County Clerk in compliance with Public Resources Code Sections 21108 and 21152. The NOD indicates that the City approved the proposed project on January 23, 2002, (Planning Commission Resolution No. 02-15) finding that with the mitigation measures adopted as a condition of approval, the project will not have a significant effect on the environment.

The City's Initial Study/Mitigated Negative Declaration identified potentially significant environmental impacts related to water, air quality, biology, and hazards. A Mitigation Monitoring Program was adopted pursuant to the Mitigated Negative Declaration and Planning Commission Resolution No. 02-15, to ensure implementation of mitigation measures related to each impact area. We find that the City adopted reasonable mitigations to reduce the potential impacts to less than significant levels and we similarly require implementation of the adopted mitigations as part of our approval.

Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fee or charges established by the Commission or by the Federal Energy Regulatory

Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed “passive” by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The Option Agreement and the proposed lease are “passive “ for sharing purposes.⁴

Discussion

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a Section 851 proceeding is to determine whether the transaction serves the public interest: “The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.” (D.02-01-058 (2002).) We have reviewed the proposed agreement and find it does not interfere with SCE’s operation or affect

⁴ See Attachment B to SCE’s Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

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its ability to provide service to its customers. In other contexts, we have defined

“productive” activities as those that lead to a measurable benefit to ratepayers. Because ratepayers will receive 30% of the gross revenue from the transaction without incurring any measurable increased costs, we find that the property is being “used for other productive purposes” and accordingly the proposed Lease is in the public interest and the Application should be approved.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for Copart to construct its facilities on the Site, a lease from SCE is required.
2. Lease of the Site to Copart is consistent with the current uses of the related SCE properties.
3. The lease and associated construction will not impair SCE’s ability to provide service to the public.
4. The City of Rancho Cucamonga is lead agency for the proposed project under CEQA.

5. In approving the proposed project, the City of Rancho Cucamonga adopted a mitigated negative declaration making mitigation measures a condition of approval.

6. On February 1, 2002, a Notice of Determination was filed with the County Clerk finding that with the adopted mitigations, the project will not have a significant effect on the environment.

7. The Commission is a responsible agency under CEQA and has reviewed the City's environmental documents.

8. All revenue from the lease in excess of a Commission-established threshold will be treated as OOR and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.

9. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested lease is in the public interest.

2. We find that the City's environmental documents are adequate for our review and decisionmaking purposes.

3. We find that the City adopted reasonable mitigation measures to reduce potential environmental impacts to less than significant levels. We will adopt the mitigation measures as part of our approval.

4. This decision should be effective today in order to allow Copart to expeditiously enter into the lease with SCE.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's Application for authority to lease a portion of its Etiwanda-Padua and Mira Loma-Padua Right of Way to Copart, Inc. is granted, as described above.

2. This proceeding is closed.

This order is effective today.

Dated February 27, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners